

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

IN THE MATTER OF)	Docket No. CWA-08-2003-0035
)	
Cenex Harvest States Cooperatives)	CONSENT AGREEMENT
5500 Cenex Drive)	
Inver Grove Heights, MN 55077,)	
)	
(Eastern Farmer's Co-Op)	
Colton Bulk Plant Facility,))	
)	
Respondent.)	

STATUTORY AUTHORITY

Complainant United States Environmental Protection Agency Region 8 ("Complainant") and Respondent, Cenex Harvest States Cooperative ("Respondent"), by their undersigned representatives, hereby consent and agree as follows:

1. On February 20, 2003, Complainant issued Respondent an Administrative Complaint and Notice of Opportunity for Hearing under Section 311(b)(6)(B)(i) of the Clean Water Act (the Act), 33 U.S.C. § 1321(b)(6)(B)(i), as amended by the Oil Pollution Act of 1990 (herein, the "Complaint"), for alleged violations of the Act and related Spill Prevention, Control and Countermeasures ("SPCC") requirements set forth at 40 C.F.R. Part 112 at Respondent's Eastern Farmer's Co-Op Colton Bulk Plant located at 104 E. Eighth Street, Colton, South Dakota. The Complaint proposed a civil penalty for the violations alleged therein.

2. Respondent admits the jurisdictional allegations of the Complaint and the Consent Agreement.

3. Respondent neither admits nor denies the specific factual allegations of the Complaint and the Consent Agreement.

4. Respondent waives its right to a hearing before any tribunal, to contest any issue of law or fact set forth in the Complaint or this Consent Agreement.

5. This Consent Agreement contains all terms of the settlement agreed to by the Parties. Upon incorporation into a Final Order, this Consent Agreement applies to and is binding upon Complainant and Respondent, Respondent's officers, directors, employees, agents and all persons acting under or for Respondent, until such time as the civil penalty required under paragraph no. 8 has been paid and the compliance activities referenced in paragraph no. 13 are fully performed, and any delays in performance have been resolved. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this agreement.

6. Pursuant to § 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8), EPA determined that an appropriate civil penalty to settle this action is in the amount of twenty thousand five hundred dollars (\$20,500) after considering the seriousness of the violations, the economic benefit to the violator, the degree of culpability, any other penalty for the same incident, any prior history, Respondent's efforts to mitigate the effects of a discharge, the economic impact of the penalty on the violator, Respondents' agreement to perform the compliance activities outlined herein, and any other matters as justice may require.

7. Respondent consents and agrees to pay the amount of Twenty Thousand Five Hundred Dollars (\$20,500) and perform the compliance activities set forth in paragraph no. 13

herein to resolve all counts alleged in the Complaint.

TERMS OF SETTLEMENT

Civil Penalty

8. Respondent shall remit a cashier's or certified check in the amount of Twenty Thousand Five Hundred Dollars (\$20,500) within thirty (30) days of the effective date of the Final Order made payable to "Oil Spill Liability Trust Fund" to:

Jane Nakad
Technical Enforcement Program (8ENF-T)
U.S. EPA Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466

Respondent shall write the docket number and name of the facility on the check.

9. Respondent agrees to mail a copy of the check simultaneously to the following:

Amy Swanson (8ENF-L)
U.S. EPA Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466

and to:

Tina Artemis, Regional Hearing Clerk (8RC)
U.S. EPA Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466

10. Respondent agrees that in the event that payment is not received by the date specified in paragraph 8 above, interest shall accrue from the due date at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717 and will continue to accrue until payment is received in full.

11. In addition, Respondent agrees to pay a handling charge of fifteen dollars (\$15.00) after the first 30 days that the payment, or any portion thereof, is overdue, and each subsequent thirty-day period that the penalty remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount not paid within 90 days after the date of the Final Order. Payments are first applied to accrued interest, penalty and/or handling charges; the balance is then applied to the outstanding principal amount.

12. Respondent agrees that the penalty paid under this Consent Agreement may not be claimed as a federal or other tax deduction or credit.

Compliance Activities

13. In addition to payment of the civil penalty referenced above, Respondents agree to perform the following activities within the timeframes specified to return to compliance with the CWA and its implementing SPCC regulations:

- a. No later than sixty (60) days from the effective date of this Consent Agreement, Respondent agrees to construct and install adequate secondary containment around all regulated tanks in accordance with 40 C.F.R. part 112. Respondent agrees to provide EPA with documentation (e.g. photographs or invoices) of secondary containment installation within thirty (30) days of completion.
- b. Within the same sixty (60) day time period as provided in paragraph 13(a) above, Respondent agrees to fully perform the corrective action items set forth in **Attachment A**, including implementation/installation of all required procedures, methods or equipment proposed in the existing SPCC Plan.

- c. No later than ninety (90) days from the effective date of this Consent Agreement, Respondent agrees to finalize its existing SPCC Plan to reflect existing conditions at the facility based on installation of secondary containment and implementation of the corrective action items performed under paragraphs 13(a) and (b) above, respectively. Respondent agrees to provide EPA with a copy of the final SPCC Plan within thirty (30) days of its completion.

GENERAL PROVISIONS

14. Nothing in this Consent Agreement shall relieve Respondent of the duty to comply with the Act and its implementing regulations.
15. Failure by Respondent to comply with any of the terms of this Consent Agreement shall constitute a breach and may result in referral of the matter to the Department of Justice for enforcement of this Consent Agreement and for such other relief as may be appropriate.
16. Nothing in this Consent Agreement shall be construed as a waiver by EPA of its authority to seek costs or any appropriate penalty associated with any collection action instituted if Respondent fails to perform pursuant to the terms of this Consent Agreement.
17. Respondent's undersigned representative certifies that he or she is fully authorized to enter into the terms and conditions for this Consent Agreement and to bind the party he or she represents to the terms and conditions of this Consent Agreement.
18. The Parties agree to bear their own costs and attorneys fees in connection with this matter.
19. The Parties agree to forward this Consent Agreement to the Regional Judicial

Officer with a request that it be incorporated into a Final Order.

Eastern Farmers Co-Op Consent Agreement

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20. This Consent Agreement, upon incorporation into a Final Order by the Regional Judicial Officer and upon full payment of the amount and performance of the compliance activities referenced herein by the Respondent shall constitute a complete and full civil settlement of the specific violations alleged in the Complaint.

SO CONSENTED AND AGREED TO BY:

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION VIII
Complainant.

Date: 6/10/03

SIGNED
Elisabeth Evans, Director
Technical Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

Date: 6/10/03

DAVID J. JANIK
Michael T. Risner, Director
David J. Janik, Supervisory Attorney
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

EASTERN FARMERS CO-OP
Respondent.

Date: 6-11-2003

SIGNED
Stanley Hippe, General Manager

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **Consent Agreement** in the matter of **CENEX HARVEST STATES COOPERATIVE, DOCKET NO.: CWA-8-2002-0035** was filed with the Regional Hearing Clerk on June 16, 2003.

Further the undersigned certifies that a true and correct copy of the document was delivered to Amy Swanson, Enforcement Attorney, U.S. EPA - Region VIII, 999 18th Street - Suite 300, CO 80202-2466. True and correct copies of the aforementioned document was placed in the United States mail on June 16, 2003 to:

Charles Springman
Petroleum Manager
Eastern Farmers Cooperative
P. O. Bos 155
Lennox, SD 57039-0155

Peter Muschler
EHS Manager
Cenex Harvest States
P. O. Box 64089
St. Paul, MN 55164-0089

Stanley Hippe, General Manager
Eastern Farmers Cooperative
P.O. Box 20
Brandon, SD 57005

and

Commander
CG-NPFC
Finance Center (OGR)
1430 A Kristina Way
Chesapeake, VA 23326

June 16, 2003

SIGNED

Eduardo J. Perez
Acting Regional Hearing Clerk

